

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITY INSURANCE COMPANY OF	:	
HARTFORD,	:	
Plaintiff,	:	
	:	
-vs-	:	Civ. No. 3:01cv2198(PCD)
	:	
TRUSTMARK INSURANCE COMPANY,	:	
Defendant.	:	

RULING ON TIG INSURANCE COMPANY’S MOTION TO COMPEL

Third-party defendant TIG Insurance Company (“TIG”) moves to compel defendant’s response to interrogatories. The motion is **granted**.

TIG served defendant with its first fourteen numbered interrogatories. Defendant responded by objecting to Interrogatory Eight through Fourteen as in excess of the twenty-five interrogatory limit of FED. R. CIV. P. 33(a).

FED. R. CIV. P. 33(a) imposes a presumptive limit of twenty-five interrogatories. Although the actual number of interrogatories served is less than the presumptive limit, defendant argues that consideration of the discrete subparts of the fourteen interrogatories, as required by FED. R. CIV. P. 33(a), results in a number well in excess of twenty-five. A subpart is discrete and regarded as a separate interrogatory when it is logically or factually independent of the question posed by the basic interrogatory. *See Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 444-45 (C.D. Cal. 1998); *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 685-87 (D. Nev. 1997). Or, stated differently, a subpart is independent and thus discrete when it is unnecessary to the understanding of a second subpart. *See Kendall*, 174 F.R.D. at 686.

Defendant argues that Interrogatories One and Two both consist of two subparts by asking (1)

identify individuals involved in the appointment of WEB as agent and (2) describe such individual's involvement. Such is not the case. A response to Part (1) is implicit in a response to Part (2), thus a complete answer to the latter requires an answer to the former. The two subparts are not discrete and may not be characterized as a total of four interrogatories.

Defendant argues that Interrogatory Five consists of thirteen discrete subparts, specifically five subparts pertaining to the basis for five allegations contained in a single paragraph of the complaint, five subparts pertaining to the identification of documents pertaining to those five allegations, one subpart pertaining to other documents, one subpart pertaining to oral communications and one paragraph pertaining to circumstances. The paragraph of the complaint at issue, Paragraph 3, essentially alleges the elements of a common law fraud, which include (1) a false representation of fact made to plaintiff, (2) known to be untrue, (3) offered to deceive and to induce reliance or action, and (4) which injures plaintiff through such action or reliance.¹ See, e.g., *Suez Equity Investors, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 104 (2d Cir. 2001). Information as to the fourth element, proof on injury, is not sought through the interrogatory.

Although the appropriate line between the excessively broad and exceedingly narrow interrogatory may be difficult to define, a single interrogatory seeking evidence supporting all elements of a claim of fraud is overly broad. Each element is discrete, and a scope of interrogatory defined by a "common theme" is not sufficiently expansive to include an entire claim, for if such were the case a party could simply pose interrogatories requiring that the opposing party describe in detail all evidence supporting the allegations in Count X. Under no theory would such an interrogatory be appropriate.

¹ As indicated in prior rulings, this Court takes no position on choice of law in the present case. The reference to New York law is for illustrative purposes only.

The interrogatory must therefore be read as three discrete subparts, one for each element as described above, which seek information as to evidence, documentary or otherwise, supporting the particular element. As described above, an interrogatory seeking an identification and a description are not discrete subparts. Nor does the nature of the evidence require distinct interrogatories specifying documentary or verbal evidence. Interrogatory Five is therefore three separate interrogatories.

Defendant argues Interrogatory Six requests identification of two separate groups and is thus two separate interrogatories. TIG concedes the same, thus Interrogatory Six is two separate interrogatories.

Defendant argues that Interrogatory Seven consists of five discrete subparts, specifically (1) specify why defendant believes that TIG fraudulently induced WEB or its agents to bind defendant or U.S. Life Insurance Company through reinsurance agreements in 1998, (2) state the basis for such belief, (3) identify documents providing evidentiary support for the allegation, (4) identify verbal communications supporting the allegation and (5) explain circumstances surrounding the allegations. The interrogatory is limited to acts or omissions pertaining to why defendant believes TIG induced it to enter into a specific agreement and thus falls within the ambit of the Advisory Committee's note to FED. R. CIV. P. 33 that a "question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication." Interrogatory Seven is thus a single interrogatory.

In light of the above, the number of interrogatories answered falls far short of the twenty-five permitted. As such was the only objection, defendant is hereby ordered to respond to the remaining Interrogatories Eight through Fourteen.

TIG also seeks an order compelling responses on the interrogatories for which incomplete

answers were provided. In response to Interrogatory 4, which sought the identity of “each individual involved in the decision(s) whether or not Trustmark would assert a claim(s) against WEB,” defendant that “Trustmark has never asserted any claims against WEB.” The response does not address the question of whether the decision was made not to assert a claim and the identity of thus who made such decision. Defendant is therefore ordered to supplement its response accordingly.

TIG further argues that defendant failed to provide the detailed information requested in Interrogatories Five through Seven. Specifically, TIG argues that defendant failed to provide details as to verbal communications and declined to provide information as to a 1998 agreement on grounds of relevancy. Defendant does not address its relevancy objection in its memorandum in opposition, and as such its objection is overruled. Defendant further argues that it continues to investigate its allegations and acknowledges its duty to provide details as they become available. This Court will not presume that its failure to answer the interrogatories completely evinces more than a lack of knowledge, and as such defendant is reminded to further such information as it becomes available.

Finally, defendant argues that TIG failed to adhere to procedures in seeking a good faith resolution prior to filing the present motion. It is not apparent that TIG declined to engage in a good faith effort to resolve the matter, and although it is apparent that TIG referred to a memorandum in support of its motion to compel when responding to defendant’s argument as to the number of interrogatories served, and in doing so may have jumped the gun, it is not apparent a resolution was forthcoming. There was an obvious disagreement as to whether the fourteen interrogatories constituted more or less than twenty-five interrogatories, with each party holding to its respective position. It is not apparent that a response by TIG identifying a specific number greater than fourteen but less than twenty-five would have furthered a resolution. The motion will therefore not be denied for failure to

seek a good faith resolution of the dispute prior to filing the present motion.

Third-Party TIG's motion to compel further interrogatory responses from Trustmark (Doc. No. 161) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, March ___, 2003.

Peter C. Dorsey
United States District Judge